

Introduced by Senator Blakeslee

February 18, 2011

An act to amend Section 1370 of the Penal Code, relating to competency.

LEGISLATIVE COUNSEL'S DIGEST

SB 795, as introduced, Blakeslee. Competency: involuntary medication.

Existing law provides for the commitment of persons found mentally incompetent for criminal process. Existing law also provides that if the defendant consented to antipsychotic medication, as specified, but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered, and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication.

Existing law provides that if informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication, or that the defendant is a danger to others, as specified, the committing court shall be notified of this, including an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate.

Existing law further provides that the court shall provide notice to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered, as specified.

This bill would provide that if informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication, or that the defendant is a danger to others, as specified, then the treating psychiatrist shall file a petition with the committing court for issuance of an emergency order within 24 hours after determining that antipsychotic medication has become medically necessary and appropriate.

The bill would require the court to provide notice to the prosecuting attorney and to the attorney representing the defendant, and to hold a preliminary hearing no later than the first court day commencing after a period of 48 hours after the determination that antipsychotic medication has become medically necessary and appropriate has been made to establish probable cause for grounds to administer antipsychotic medication.

The bill would require the court to render its decision on the petition no later than the first court day following a period of 72 hours after the determination that antipsychotic medication has become medically necessary and appropriate was made.

The bill would provide that if, as a result of the preliminary hearing, the court determines that probable cause continues to exist for the administration of antipsychotic medication, the court may issue an order authorizing the administration of that medication on an emergency basis after finding on the record, based on clear and convincing evidence, that the defendant lacks capacity to make decisions regarding antipsychotic medication, or the defendant is a danger to others, as specified, and that no other appropriate means are available to mitigate the patient's situation.

The bill would authorize antipsychotic medication to be provided pursuant to the emergency order for no more than 14 days, exclusive of Saturdays, Sundays, and legal holidays pending a hearing, as specified, to be held not later than those same 14 days.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1370 of the Penal Code is amended to
2 read:

1 1370. (a) (1) (A) If the defendant is found mentally
2 competent, the criminal process shall resume, the trial on the
3 offense charged shall proceed, and judgment may be pronounced.

4 (B) If the defendant is found mentally incompetent, the trial or
5 judgment shall be suspended until the person becomes mentally
6 competent.

7 (i) In the meantime, the court shall order that the mentally
8 incompetent defendant be delivered by the sheriff to a state hospital
9 for the care and treatment of the mentally disordered, or to any
10 other available public or private treatment facility approved by the
11 community program director that will promote the defendant's
12 speedy restoration to mental competence, or placed on outpatient
13 status as specified in Section 1600.

14 (ii) However, if the action against the defendant who has been
15 found mentally incompetent is on a complaint charging a felony
16 offense specified in Section 290, the prosecutor shall determine
17 whether the defendant previously has been found mentally
18 incompetent to stand trial pursuant to this chapter on a charge of
19 a Section 290 offense, or whether the defendant is currently the
20 subject of a pending Section 1368 proceeding arising out of a
21 charge of a Section 290 offense. If either determination is made,
22 the prosecutor shall so notify the court and defendant in writing.
23 After this notification, and opportunity for hearing, the court shall
24 order that the defendant be delivered by the sheriff to a state
25 hospital or other secure treatment facility for the care and treatment
26 of the mentally disordered unless the court makes specific findings
27 on the record that an alternative placement would provide more
28 appropriate treatment for the defendant and would not pose a
29 danger to the health and safety of others.

30 (iii) If the action against the defendant who has been found
31 mentally incompetent is on a complaint charging a felony offense
32 specified in Section 290 and the defendant has been denied bail
33 pursuant to subdivision (b) of Section 12 of Article I of the
34 California Constitution because the court has found, based upon
35 clear and convincing evidence, a substantial likelihood that the
36 person's release would result in great bodily harm to others, the
37 court shall order that the defendant be delivered by the sheriff to
38 a state hospital for the care and treatment of the mentally disordered
39 unless the court makes specific findings on the record that an
40 alternative placement would provide more appropriate treatment

1 for the defendant and would not pose a danger to the health and
2 safety of others.

3 (iv) The clerk of the court shall notify the Department of Justice
4 in writing of any finding of mental incompetence with respect to
5 a defendant who is subject to clause (ii) or (iii) for inclusion in his
6 or her state summary criminal history information.

7 (C) Upon the filing of a certificate of restoration to competence,
8 the court shall order that the defendant be returned to court in
9 accordance with Section 1372. The court shall transmit a copy of
10 its order to the community program director or a designee.

11 (D) A defendant charged with a violent felony may not be
12 delivered to a state hospital or treatment facility pursuant to this
13 subdivision unless the state hospital or treatment facility has a
14 secured perimeter or a locked and controlled treatment facility,
15 and the judge determines that the public safety will be protected.

16 (E) For purposes of this paragraph, “violent felony” means an
17 offense specified in subdivision (c) of Section 667.5.

18 (F) A defendant charged with a violent felony may be placed
19 on outpatient status, as specified in Section 1600, only if the court
20 finds that the placement will not pose a danger to the health or
21 safety of others. If the court places a defendant charged with a
22 violent felony on outpatient status, as specified in Section 1600,
23 the court must serve copies of the placement order on defense
24 counsel, the sheriff in the county where the defendant will be
25 placed and the district attorney for the county in which the violent
26 felony charges are pending against the defendant.

27 (2) Prior to making the order directing that the defendant be
28 confined in a state hospital or other treatment facility or placed on
29 outpatient status, the court shall proceed as follows:

30 (A) The court shall order the community program director or a
31 designee to evaluate the defendant and to submit to the court within
32 15 judicial days of the order a written recommendation as to
33 whether the defendant should be required to undergo outpatient
34 treatment, or committed to a state hospital or to any other treatment
35 facility. No person shall be admitted to a state hospital or other
36 treatment facility or placed on outpatient status under this section
37 without having been evaluated by the community program director
38 or a designee.

1 (B) The court shall hear and determine whether the defendant,
2 with advice of his or her counsel, consents to the administration
3 of antipsychotic medication, and shall proceed as follows:

4 (i) If the defendant, with advice of his or her counsel, consents,
5 the court order of commitment shall include confirmation that
6 antipsychotic medication may be given to the defendant as
7 prescribed by a treating psychiatrist pursuant to the defendant's
8 consent. The commitment order shall also indicate that, if the
9 defendant withdraws consent for antipsychotic medication, after
10 the treating psychiatrist complies with the provisions of
11 subparagraph (C), the defendant shall be returned to court for a
12 hearing in accordance with this subdivision regarding whether
13 antipsychotic medication shall be administered involuntarily.

14 (ii) If the defendant does not consent to the administration of
15 medication, the court shall hear and determine whether any of the
16 following is true:

17 (I) The defendant lacks capacity to make decisions regarding
18 antipsychotic medication, the defendant's mental disorder requires
19 medical treatment with antipsychotic medication, and, if the
20 defendant's mental disorder is not treated with antipsychotic
21 medication, it is probable that serious harm to the physical or
22 mental health of the patient will result. Probability of serious harm
23 to the physical or mental health of the defendant requires evidence
24 that the defendant is presently suffering adverse effects to his or
25 her physical or mental health, or the defendant has previously
26 suffered these effects as a result of a mental disorder and his or
27 her condition is substantially deteriorating. The fact that a
28 defendant has a diagnosis of a mental disorder does not alone
29 establish probability of serious harm to the physical or mental
30 health of the defendant.

31 (II) The defendant is a danger to others, in that the defendant
32 has inflicted, attempted to inflict, or made a serious threat of
33 inflicting substantial physical harm on another while in custody,
34 or the defendant had inflicted, attempted to inflict, or made a
35 serious threat of inflicting substantial physical harm on another
36 that resulted in his or her being taken into custody, and the
37 defendant presents, as a result of mental disorder or mental defect,
38 a demonstrated danger of inflicting substantial physical harm on
39 others. Demonstrated danger may be based on an assessment of
40 the defendant's present mental condition, including a consideration

1 of past behavior of the defendant within six years prior to the time
2 the defendant last attempted to inflict, inflicted, or threatened to
3 inflict substantial physical harm on another, and other relevant
4 evidence.

5 (III) The people have charged the defendant with a serious crime
6 against the person or property; involuntary administration of
7 antipsychotic medication is substantially likely to render the
8 defendant competent to stand trial; the medication is unlikely to
9 have side effects that interfere with the defendant's ability to
10 understand the nature of the criminal proceedings or to assist
11 counsel in the conduct of a defense in a reasonable manner; less
12 intrusive treatments are unlikely to have substantially the same
13 results; and antipsychotic medication is in the patient's best medical
14 interest in light of his or her medical condition.

15 (iii) If the court finds any of the conditions described in clause
16 (ii) to be true, the court shall issue an order authorizing the
17 treatment facility to involuntarily administer antipsychotic
18 medication to the defendant when and as prescribed by the
19 defendant's treating psychiatrist. The court shall not order
20 involuntary administration of psychotropic medication under
21 subclause (III) of clause (ii) unless the court has first found that
22 the defendant does not meet the criteria for involuntary
23 administration of psychotropic medication under subclause (I) of
24 clause (ii) and does not meet the criteria under subclause (II) of
25 clause (ii).

26 (iv) In all cases, the treating hospital, facility or program may
27 administer medically appropriate antipsychotic medication
28 prescribed by a psychiatrist in an emergency as described in
29 subdivision (m) of Section 5008 of the Welfare and Institutions
30 Code.

31 (v) Any report made pursuant to paragraph (1) of subdivision
32 (b) shall include a description of any antipsychotic medication
33 administered to the defendant and its effects and side effects,
34 including effects on the defendant's appearance or behavior that
35 would affect the defendant's ability to understand the nature of
36 the criminal proceedings or to assist counsel in the conduct of a
37 defense in a reasonable manner. During the time the defendant is
38 confined in a state hospital or other treatment facility or placed on
39 outpatient status, either the defendant or the people may request
40 that the court review any order made pursuant to this subdivision.

1 The defendant, to the same extent enjoyed by other patients in the
2 state hospital or other treatment facility, shall have the right to
3 contact the Patients' Rights Advocate regarding his or her rights
4 under this section.

5 (C) If the defendant consented to antipsychotic medication as
6 described in clause (i) of subparagraph (B), but subsequently
7 withdraws his or her consent, or, if involuntary antipsychotic
8 medication was not ordered pursuant to clause (ii) of subparagraph
9 (B), and the treating psychiatrist determines that antipsychotic
10 medication has become medically necessary and appropriate, the
11 treating psychiatrist shall make efforts to obtain informed consent
12 from the defendant for antipsychotic medication. If informed
13 consent is not obtained from the defendant, and the treating
14 psychiatrist is of the opinion that the defendant lacks capacity to
15 make decisions regarding antipsychotic medication as specified
16 in subclause (I) of clause (ii) of subparagraph (B), or that the
17 defendant is a danger to others as specified in subclause (II) of
18 clause (ii) of subparagraph (B), the committing court shall be
19 notified of this, including an assessment of the current mental
20 status of the defendant and the opinion of the treating psychiatrist
21 that involuntary antipsychotic medication has become medically
22 necessary and appropriate. The court shall provide notice to the
23 prosecuting attorney and to the attorney representing the defendant
24 and shall set a hearing to determine whether involuntary
25 antipsychotic medication should be ordered in the manner described
26 in subparagraph (B).

27 (D) (i) *If the treating psychiatrist determines that antipsychotic*
28 *medication has become medically necessary and appropriate*
29 *pursuant to subparagraph (C), he or she shall file, with 24 hours*
30 *of that determination, a petition with the committing court for*
31 *issuance of an emergency order. For purposes of this*
32 *subparagraph, the treating psychiatrist shall not be required to*
33 *pay or deposit any fee for the filing of the petition or other*
34 *document or paper related to the petition.*

35 (ii) *The court shall provide notice to the prosecuting attorney*
36 *and to the attorney representing the defendant, and shall hold a*
37 *preliminary hearing, no later than the first court day commencing*
38 *after a period of 48 hours after the determination that antipsychotic*
39 *medication has become medically necessary and appropriate, to*

1 *establish probable cause for grounds to administer antipsychotic*
2 *medication.*

3 *(iii) The court shall render its decision on the petition no later*
4 *than the first court day following a period of 72 hours after the*
5 *determination that antipsychotic medication has become medically*
6 *necessary and appropriate.*

7 *(iv) If, as a result of the preliminary hearing, the court*
8 *determines that probable cause continues to exist for the*
9 *administration of antipsychotic medication, the court may issue*
10 *an order authorizing the administration of that medication on an*
11 *emergency basis after finding on the record, based on clear and*
12 *convincing evidence, that both of the following apply:*

13 *(I) The defendant lacks capacity to make decisions regarding*
14 *antipsychotic medication as specified in subclause (I) of clause*
15 *(ii) of subparagraph (B), or the defendant is a danger to others as*
16 *specified in subclause (II) of clause (ii) of subparagraph (B).*

17 *(II) No other appropriate means are available to mitigate the*
18 *patient's situation.*

19 *(v) Antipsychotic medication may be provided pursuant to an*
20 *emergency order issued pursuant to this subparagraph for no more*
21 *than 14 days, exclusive of Saturdays, Sundays, and legal holidays,*
22 *pending a hearing to be held not later than those same 14 days,*
23 *pursuant to clause (ii) of subparagraph (B) and any order that*
24 *may be issued pursuant to clause (iii) of subparagraph (B).*

25 *(3) When the court orders that the defendant be confined in a*
26 *state hospital or other public or private treatment facility, the court*
27 *shall provide copies of the following documents which shall be*
28 *taken with the defendant to the state hospital or other treatment*
29 *facility where the defendant is to be confined:*

30 *(A) The commitment order, including a specification of the*
31 *charges.*

32 *(B) A computation or statement setting forth the maximum term*
33 *of commitment in accordance with subdivision (c).*

34 *(C) A computation or statement setting forth the amount of*
35 *credit for time served, if any, to be deducted from the maximum*
36 *term of commitment.*

37 *(D) State summary criminal history information.*

38 *(E) Any arrest reports prepared by the police department or*
39 *other law enforcement agency.*

1 (F) Any court-ordered psychiatric examination or evaluation
2 reports.

3 (G) The community program director's placement
4 recommendation report.

5 (H) Records of any finding of mental incompetence pursuant
6 to this chapter arising out of a complaint charging a felony offense
7 specified in Section 290 or any pending Section 1368 proceeding
8 arising out of a charge of a Section 290 offense.

9 (4) When the defendant is committed to a treatment facility
10 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
11 court makes the findings specified in clause (ii) or (iii) of
12 subparagraph (B) of paragraph (1) to assign the defendant to a
13 treatment facility other than a state hospital or other secure
14 treatment facility, the court shall order that notice be given to the
15 appropriate law enforcement agency or agencies having local
16 jurisdiction at the site of the placement facility of any finding of
17 mental incompetence pursuant to this chapter arising out of a
18 charge of a Section 290 offense.

19 (5) When directing that the defendant be confined in a state
20 hospital pursuant to this subdivision, the court shall select the
21 hospital in accordance with the policies established by the State
22 Department of Mental Health.

23 (6) (A) If the defendant is committed or transferred to a state
24 hospital pursuant to this section, the court may, upon receiving the
25 written recommendation of the medical director of the state hospital
26 and the community program director that the defendant be
27 transferred to a public or private treatment facility approved by
28 the community program director, order the defendant transferred
29 to that facility. If the defendant is committed or transferred to a
30 public or private treatment facility approved by the community
31 program director, the court may, upon receiving the written
32 recommendation of the community program director, transfer the
33 defendant to a state hospital or to another public or private
34 treatment facility approved by the community program director.
35 In the event of dismissal of the criminal charges before the
36 defendant recovers competence, the person shall be subject to the
37 applicable provisions of the Lanterman-Petris-Short Act (Part 1
38 commencing with Section 5000) of Division 5 of the Welfare and
39 Institutions Code). Where either the defendant or the prosecutor
40 chooses to contest either kind of order of transfer, a petition may

1 be filed in the court for a hearing, which shall be held if the court
2 determines that sufficient grounds exist. At the hearing, the
3 prosecuting attorney or the defendant may present evidence bearing
4 on the order of transfer. The court shall use the same standards as
5 are used in conducting probation revocation hearings pursuant to
6 Section 1203.2.

7 Prior to making an order for transfer under this section, the court
8 shall notify the defendant, the attorney of record for the defendant,
9 the prosecuting attorney, and the community program director or
10 a designee.

11 (B) If the defendant is initially committed to a state hospital or
12 secure treatment facility pursuant to clause (ii) or (iii) of
13 subparagraph (B) of paragraph (1) and is subsequently transferred
14 to any other facility, copies of the documents specified in paragraph
15 (3) shall be taken with the defendant to each subsequent facility
16 to which the defendant is transferred. The transferring facility shall
17 also notify the appropriate law enforcement agency or agencies
18 having local jurisdiction at the site of the new facility that the
19 defendant is a person subject to clause (ii) or (iii) of subparagraph
20 (B) of paragraph (1).

21 (b) (1) Within 90 days of a commitment made pursuant to
22 subdivision (a), the medical director of the state hospital or other
23 treatment facility to which the defendant is confined shall make a
24 written report to the court and the community program director
25 for the county or region of commitment, or a designee, concerning
26 the defendant's progress toward recovery of mental competence.
27 Where the defendant is on outpatient status, the outpatient treatment
28 staff shall make a written report to the community program director
29 concerning the defendant's progress toward recovery of mental
30 competence. Within 90 days of placement on outpatient status, the
31 community program director shall report to the court on this matter.
32 If the defendant has not recovered mental competence, but the
33 report discloses a substantial likelihood that the defendant will
34 regain mental competence in the foreseeable future, the defendant
35 shall remain in the state hospital or other treatment facility or on
36 outpatient status. Thereafter, at six-month intervals or until the
37 defendant becomes mentally competent, where the defendant is
38 confined in a treatment facility, the medical director of the hospital
39 or person in charge of the facility shall report in writing to the
40 court and the community program director or a designee regarding

1 the defendant's progress toward recovery of mental competence.
2 Where the defendant is on outpatient status, after the initial 90-day
3 report, the outpatient treatment staff shall report to the community
4 program director on the defendant's progress toward recovery,
5 and the community program director shall report to the court on
6 this matter at six-month intervals. A copy of these reports shall be
7 provided to the prosecutor and defense counsel by the court. If the
8 report indicates that there is no substantial likelihood that the
9 defendant will regain mental competence in the foreseeable future,
10 the committing court shall order the defendant to be returned to
11 the court for proceedings pursuant to paragraph (2) of subdivision
12 (c). The court shall transmit a copy of its order to the community
13 program director or a designee.

14 (2) Any defendant who has been committed or has been on
15 outpatient status for 18 months and is still hospitalized or on
16 outpatient status shall be returned to the committing court where
17 a hearing shall be held pursuant to the procedures set forth in
18 Section 1369. The court shall transmit a copy of its order to the
19 community program director or a designee.

20 (3) If it is determined by the court that no treatment for the
21 defendant's mental impairment is being conducted, the defendant
22 shall be returned to the committing court. The court shall transmit
23 a copy of its order to the community program director or a
24 designee.

25 (4) At each review by the court specified in this subdivision,
26 the court shall determine if the security level of housing and
27 treatment is appropriate and may make an order in accordance
28 with its determination.

29 (c) (1) At the end of three years from the date of commitment
30 or a period of commitment equal to the maximum term of
31 imprisonment provided by law for the most serious offense charged
32 in the information, indictment, or misdemeanor complaint,
33 whichever is shorter, a defendant who has not recovered mental
34 competence shall be returned to the committing court. The court
35 shall notify the community program director or a designee of the
36 return and of any resulting court orders.

37 (2) Whenever any defendant is returned to the court pursuant
38 to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this
39 subdivision and it appears to the court that the defendant is gravely
40 disabled, as defined in subparagraph (B) of paragraph (1) of

subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(3) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which criminal charges are pending.

(4) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department

1 of Mental Health pursuant to Section 1605 of this code and Section
2 4360 of the Welfare and Institutions Code.
3 (g) For the purpose of this section, “secure treatment facility”
4 shall not include, except for state mental hospitals, state
5 developmental centers, and correctional treatment facilities, any
6 facility licensed pursuant to Chapter 2 (commencing with Section
7 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
8 3.2 (commencing with Section 1569) of, Division 2 of the Health
9 and Safety Code, or any community board and care facility.

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